

Senate Daily Reader

Friday, February 15, 2002

Bills Included				
HB 1034	HB 1059	HB 1068	HB 1121	HB 1136
HB 1160	HB 1189	HB 1220	HB 1265	HB 1280
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State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0213

HOUSE ENGROSSED NO. **HB 1034** - 01/25/2002

Introduced by: The Committee on Transportation at the request of the Department of
Transportation

1 FOR AN ACT ENTITLED, An Act to reduce the legal blood alcohol limits for motor vehicle
2 drivers and boat operators.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. ~~A~~ No person may ~~not~~ drive or be in actual physical control of any vehicle while:

6 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in ~~his~~ that person's blood as
7 shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily
8 substance;

9 (2) Under the influence of an alcoholic beverage;

10 (3) Under the influence of marijuana or any controlled drug or substance to a degree
11 which renders ~~him~~ the person incapable of safely driving; or

12 (4) Under the combined influence of an alcoholic beverage and marijuana or any
13 controlled drug or substance to a degree which renders ~~him~~ the person incapable of
14 safely driving.

15 Section 2. That § 32-23-7 be amended to read as follows:



32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight hundredths percent by weight of alcohol in the defendant's blood, such fact ~~shall~~ does not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

Section 3. That § 32-23-1.3 be amended to read as follows:

32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle while the weight of alcohol in the blood of the arrested person is ~~0.10~~ 0.08 percent or greater, shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record and files the reasons with the clerk of courts.

Section 4. That § 32-12A-44 be amended to read as follows:

32-12A-44. No person may drive or be in actual physical control of a commercial motor vehicle while there is between 0.04 and ~~0.10~~ 0.08 percent or more, by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other body substance. Any violation of this section is a Class 2 misdemeanor.

Section 5. That § 42-8-45 be amended to read as follows:

42-8-45. No person may operate a boat while underway on the public waters of the state while:

- (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in his blood as shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage;
- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders ~~him~~ the person incapable of safely driving or operating such boat; or
- (4) Under the combined influence of an alcoholic beverage and marijuana or any controlled drug or substance to a degree which renders ~~him~~ the person incapable of safely driving or operating such boat.

Any violation of this section is a Class 1 misdemeanor.

Section 6. That § 42-8-45.4 be amended to read as follows:

42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the influence of intoxicating liquor;

1 (2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight
2 hundredths percent by weight of alcohol in the defendant's blood, such fact does not
3 give rise to any presumption that the defendant was or was not under the influence of
4 intoxicating liquor, but such fact may be considered with other competent evidence
5 in determining the guilt or innocence of the defendant;

6 (3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol
7 in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the
8 influence of intoxicating liquor.

9 Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0
10 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

726H0054

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1059 - 02/13/2002

Introduced by: Representatives Brown (Jarvis), Begalka, Broderick, Fryslie, Hennies (Don), Kooistra, McCaulley, Nachtigal, and Sebert and Senators Diedrich (Larry), de Hueck, and Dennert

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning property
2 classifications and assessment appeals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-11-16 be amended to read as follows:

5 10-11-16. Any ~~resident~~ property owner or taxpayer of a township or municipality, as an
6 individual or through an attorney or agent, feeling aggrieved by anything in the assessment roll
7 may appeal to the local board of equalization for the correction of alleged errors in the listing or
8 valuation of the person's property. ~~The person shall notify the~~ Any lessee responsible for payment
9 of taxes pursuant to the provisions of a lease shall be considered the taxpayer and may appeal
10 anything in the assessment roll for the correction of alleged errors in the listing or valuation of
11 the leased property. An appeal to the local board of equalization shall be perfected by mailing
12 or by filing a notice of appeal with the clerk of the local board of equalization. If perfected by
13 mailing, the postmark shall be conclusive evidence regarding the timeliness of the appeal. The
14 clerk of the local board of equalization shall be notified of the appeal no later than the Thursday



1 preceding the third Monday in March. An appeal to the local board shall encompass the
2 aggregate valuation of the property being appealed or the property classification.

3 Section 2. That § 10-11-16.1 be amended to read as follows:

4 10-11-16.1. A local board of equalization shall hear individual valuation, classification, and
5 assessment questions of property owners or taxpayers who have appealed to the local board of
6 equalization, and may make adjustments and corrections in the assessment roll. The board shall
7 notify each appellant of the decision affecting the appellant's property in writing seven days after
8 the adjournment of the local board of equalization.

9 Section 3. That § 10-11-22 be amended to read as follows:

10 10-11-22. Any ~~person~~ property owner or taxpayer feeling aggrieved may appeal from the
11 decision of any local board of equalization to the board of equalization of the county in which
12 the municipality or township is situated.

13 Section 4. That § 10-11-23 be amended to read as follows:

14 10-11-23. An appeal from the local board of equalization to a county board of equalization
15 shall be perfected by mailing or by filing a written notice of appeal with the county auditor on
16 or before the first Tuesday in April. If perfected by mailing, the postmark shall be conclusive
17 evidence regarding the timeliness of the appeal. Appeals made pursuant to § 10-11-27 shall be
18 perfected by filing a written notice of appeal with the county auditor on or before the first
19 Tuesday in April. The county auditor shall file a copy of the notice of appeal with the appropriate
20 clerk of the local board of equalization prior to the hearing of the appeal by the county board of
21 equalization.

22 Section 5. That § 10-11-27 be amended to read as follows:

23 10-11-27. No complaint concerning property assessed in any district having a local board of
24 equalization shall be considered unless it has first been made to such local board, except a

1 nonresident owner or nonresident taxpayer of the taxing district may be heard without such
2 original complaint.

3 Section 6. That § 10-11-42 be amended to read as follows:

4 10-11-42. Any ~~person~~ owner or taxpayer feeling aggrieved by the decision of the county
5 board of equalization relative to the assessment of its property or any taxing district or
6 governmental subdivision or agency in which such property is located, feeling aggrieved by the
7 decision of the county board of equalization may appeal to the Office of Hearing Examiners. An
8 appeal to the Office of Hearing Examiners from a county board of equalization shall be perfected
9 by mailing or by filing a notice of appeal with the chief administrative law judge, Pierre, South
10 Dakota, no later than the third Friday in May. If perfected by mailing, the postmark shall be
11 conclusive evidence regarding the timeliness of the appeal. The chief administrative law judge
12 shall file a copy of the notice with the county director of equalization within ten days after receipt
13 of notice of appeal. The county director of equalization shall file notice of appeal to the
14 appropriate clerk of the local board of equalization prior to the hearing of the appeal by the
15 Office of Hearing Examiners. The notice shall state informally the substance of the decision
16 appealed from and the grounds upon which appeal is taken. The county board of equalization
17 or any person pecuniarily interested in sustaining its decision, as well as the appellant, may be
18 heard in person or by attorney upon appeals to the Office of Hearing Examiners. Nothing in this
19 section prevents an appeal to the circuit court as provided in § 10-11-44, but an appeal to either
20 tribunal excludes an appeal to the other.

21 Section 7. That § 10-11-67 be amended to read as follows:

22 10-11-67. Any resident, feeling aggrieved by anything in the assessment roll, may apply,
23 personally or through an attorney or agent, to the consolidated board of equalization for the
24 correction of alleged errors in the listing or valuation of the resident's property. A notice of a

1 complaint or grievance shall be mailed or filed in writing with the county auditor no later than
2 the first Tuesday in April. If the notice is mailed, the postmark shall be conclusive evidence
3 regarding the timeliness of the appeal. An appeal to the board shall encompass the aggregate
4 valuation of the property being appealed or the property classification.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

226H0307

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

HB 1068 - 02/06/2002

Introduced by: Representatives Richter, Brown (Richard), Davis, Eccarius, Flowers, Michels, Murschel, and Olson (Mel) and Senators Olson (Ed), Cradduck, Hutmacher, Koetzle, McCracken, Moore, Munson, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to require the recalculation of the allocation for the
2 disability levels in the state aid to special education formula.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In fiscal year 2004 and every three years thereafter, the Department of Education and
7 Cultural Affairs shall recalculate the amounts of the allocations for the disability levels defined
8 in § 13-37-35.1. The recalculation shall be based on statewide average expenditures as reported
9 to the Department of Education and Cultural Affairs in school district annual reports by disability
10 for the previous three school fiscal years.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

186H0186

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB 1121** - 02/06/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Sutton (Duane) and Frost and Senator Diedtrich (Elmer)

1 FOR AN ACT ENTITLED, An Act to revise the requirements for the location of side exhaust
2 on certain motor vehicles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-15-17 be amended to read as follows:

5 32-15-17. No person may drive a motor vehicle on a highway unless the motor vehicle is
6 equipped with an exhaust system and a muffler both in good working condition and in constant
7 operation to prevent excessive or unusual noise.

8 Exhaust systems on passenger or passenger-carrying vehicles used on any highway shall
9 discharge the exhaust fumes at a location to the rear of the vehicle body or direct the exhaust
10 fumes outward from the side of the vehicle body at a location rearward of any operable side
11 windows. Any motor vehicle equipped with side exhaust according to the original vehicle
12 manufacturer specifications is exempt from the location requirements. A bus used for the purpose
13 of carrying school children may discharge the exhaust on the left side in front of the rear axle.

14 Exhaust systems on property-carrying vehicles used on any highway shall discharge the



- 1 exhaust fumes at a point rearward of the passenger-carrying compartment.
- 2 No person may use a "muffler cut-out" on any motor vehicle upon a highway.
- 3 A violation of this section is a Class 2 misdemeanor.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

543H0472

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1136** - 02/04/2002

Introduced by: Representatives Olson (Mel), Bartling, Bradford, Burg, Davis, Elliott, Flowers, Gillespie, Glenski, Hanson (Gary), Hargens, Hundstad, Kloucek, Nachtigal, Nesselhuf, Peterson (Jim), Sigdestad, and Valandra and Senators Hutmacher, Dennert, Hagen, Koetzle, McIntyre, Moore, Reedy, Sutton (Dan), Symens, and Volesky

1 FOR AN ACT ENTITLED, An Act to clarify the approval authority for local accounts of the
2 state treasurer and state auditor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 4-4-3 be amended to read as follows:

5 4-4-3. All state public funds shall be received and maintained in the state treasury, and shall
6 be disbursed only upon proper authorization by the state auditor and the state treasurer, unless
7 the state treasurer and state auditor ~~shall~~ jointly determine a justification exists for maintaining
8 ~~such~~ public funds in a local bank account. A local bank account authorized by the state auditor
9 and state treasurer is an official account of the state subject to the custody of the state treasurer
10 under § 1-10-1. Neither the state treasurer nor the state auditor may be a signatory on any local
11 account. Any agency holding state funds in any local bank account shall provide a quarterly
12 statement of activity in that account to the state treasurer and the state auditor.

13 Section 2. That § 4-3-5 be amended to read as follows:



1 4-3-5. ~~Every such~~ Each officer or employee shall designate in writing, to be filed in ~~his~~ the
2 officer's or employee's office, the bank or banks in which ~~he shall have~~ are deposited the current
3 receipts of ~~his~~ the office or department ~~and any~~. Any account showing any such deposit ~~shall be~~
4 is an official account and shall be accessible to the inspection of the auditor-general at any time
5 during banking hours.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

466H0522

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1160 - 02/13/2002

Introduced by: Representatives Adelstein, Clark, and Murschel

1 FOR AN ACT ENTITLED, An Act to repeal certain tort liability arising out of causes of action

2 based on reduction, abduction, and alienation of affections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 20-9-7 be repealed.

5 ~~—20-9-7. The rights of personal relation forbid:~~

6 ~~—(1) The abduction of a husband from his wife or of a parent from his child;~~

7 ~~—(2) The abduction or enticement of a wife from her husband, of a child from a parent, or~~
8 ~~from a guardian entitled to its custody;~~

9 ~~—(3) The seduction of a wife, daughter, or orphan sister.~~

10 Section 2. This Act shall apply to any claim filed after January 1, 2002.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

673H0456

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1189 - 02/04/2002

Introduced by: Representatives Wick, Abdallah, Adelstein, Brown (Richard), Duniphan, Hennies (Thomas), Holbeck, Hundstad, Jensen, McCaulley, Peterson (Bill), and Smidt and Senators Munson, Greenfield, Koetzle, Koskan, Olson (Ed), and Staggers

1 FOR AN ACT ENTITLED, An Act to establish the crime of air piracy.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 22-30 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any person who obtains physical control of any aircraft registered pursuant to the provisions
6 of chapter 50-11 by means of inflicting or threatening to inflict serious bodily harm or death on
7 any person is guilty of air piracy.

8 A violation of this section that results in the death of any person is a Class B felony. Any
9 other violation of this section is a Class 1 felony.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

391H0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1220 - 02/11/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and
2 to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Upon motion or by petition, a court may allow a person other than a parent to intervene in
7 an action under this chapter involving child custody. In any matter under this chapter involving
8 child custody, the court may, in its discretion, appoint a guardian ad litem or legal counsel to
9 represent the child. The court may award full or partial custody, care, education, and visitation
10 rights of the child to a person other than a parent.

11 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 In determining any issue regarding custody of a child, the court shall be guided by the best



1 interests of the child. The court may consider any preference expressed by the child if the court
2 finds the child is of sufficient age and intelligence to express a knowing and voluntary preference.
3 In any dispute involving child custody, a presumption favoring a parent may be rebutted by
4 showing serious detriment to the child as evidenced by one or more of the following
5 extraordinary circumstances:

- 6 (1) The abandonment or persistent neglect of the child by the parent;
- 7 (2) The likelihood of serious physical or emotional harm to the child if placed in the
8 parent's custody;
- 9 (3) The extended, unjustifiable absence of parental custody;
- 10 (4) The abdication of parental responsibilities;
- 11 (5) The provision of the child's physical, emotional, and other needs by persons other than
12 the parent over a significant period of time;
- 13 (6) The existence of a bonded relationship between the child and a person other than the
14 parent sufficient to cause significant emotional harm to the child in the event of a
15 change in custody;
- 16 (7) The substantial enhancement of the child's well-being while under the care of a person
17 other than the parent;
- 18 (8) The extent of the parent's delay in seeking to reacquire custody of the child;
- 19 (9) The demonstrated quality of the parent's commitment to raising the child;
- 20 (10) The likely degree of stability and security in the child's future with the parent;
- 21 (11) The extent to which the child's right to an education would be impaired while in the
22 custody of the parent; or
- 23 (12) Any other circumstances that would substantially and adversely impact the welfare of
24 the child.

1 Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A judgment under section 1 of this Act awarding any person other than a biological parent
4 custodial rights may award the biological parent with visitation rights with the child.

5 Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 If a court awards a third party custodial rights to a child, the court may set child support in
8 whatever amount it deems appropriate, and notwithstanding the provisions of any other statute
9 to the contrary, may waive the biological parent's duty to provide monetary or other support for
10 their child.

11 Section 5. The term, parent, as used in this Act, means any biological or adoptive parent. The
12 term, biological parent, as used in this Act, means any biological or adoptive parent.

13 Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,
14 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
15 effect from and after its passage and approval.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

832H0475

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1265** - 02/06/2002

Introduced by: Representatives Abdallah, Broderick, Brown (Jarvis), Brown (Richard), Davis, Derby, Duenwald, Duniphan, Frost, Fryslie, Hanson (Gary), Heineman, Hennies (Thomas), Hundstad, Jaspers, Juhnke, Konold, Kooistra, Madsen, McCaulley, Murschel, Napoli, Nesselhuf, Peterson (Bill), Richter, Sebert, and Valandra and Senators Munson, Albers, Cradduck, Diedrich (Larry), Hutmacher, McCracken, and Symens

1 FOR AN ACT ENTITLED, An Act to allow for the issuance of metal plates with a special
2 designation to auction agencies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The department shall issue metal numerical license plates to an auction agency upon
7 application and payment of a one hundred dollar yearly fee to be paid at the time of the annual
8 review date for each set desired. Such fees shall be distributed in the manner specified in
9 §§ 32-11-2 and 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered
10 consecutively and shall bear as a prefix the number 99. The plates may be issued for a multiple
11 year period. If an auction agency's license is revoked or canceled or the auction agency goes out
12 of business, the 99 plates shall be returned to the department. If any person operates a motor



1 vehicle with 99 plates after the auction agency's license is revoked or canceled or after the
2 auction agency goes out of business, or if the person refuses to return the plates, the person is
3 guilty of a Class 2 misdemeanor.

4 Section 2. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any vehicle being transported to or from the auction agency's place of business bearing a 99
7 license plate issued pursuant to section 1 of this Act may be driven on the streets and highways
8 of this state for the purpose of transporting a vehicle that will be sold or has been sold by the
9 auction agency. The 99 license plate is transferable by the auction agency from one vehicle to
10 another vehicle for transporting purposes. A violation of this section is a Class 2 misdemeanor.

11 Section 3. That § 32-6B-36.2 be repealed.

12 ~~— 32-6B-36.2. Any vehicle that is in the possession of a dealer's car auction agency and that~~
13 ~~will be offered for sale may be driven upon the streets and highways of this state within a twenty~~
14 ~~mile radius of the car auction agency for travel to and from a service facility, such as a repair,~~
15 ~~body, or detail shop, if displaying an in-transit auction permit. The department shall prescribe the~~
16 ~~form for the in-transit auction permit.~~

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

913H0705

HOUSE ENGROSSED NO. **HB 1280** - 02/07/2002

Introduced by: Representative Derby

1 FOR AN ACT ENTITLED, An Act to revise the definition of a controlled group for sales tax
2 purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-20.3 be amended to read as follows:

5 10-45-20.3. For the purposes of this chapter, a controlled group consists of ~~such~~
6 ~~corporations or other entities which are~~ any corporations or other entities eligible to file a
7 consolidated federal income tax return under the Internal Revenue Code as in effect on
8 January 1, ~~1983~~ 2002, or entitled to only a single surtax exemption for federal corporate income
9 tax purposes under the Internal Revenue Code as in effect on January 1, ~~1983~~ 2002, and includes
10 a controlled group of corporations as defined at 26 U.S.C. § 1563 as in effect on January 1, ~~1989~~
11 2002. A controlled group also consists of any subchapter S corporation, limited liability
12 company, limited liability partnership, general partnership, or limited partnership with at least
13 eighty percent common ownership as if the entity was converted to or taxed as a subchapter C
14 corporation under the Internal Revenue Code as in effect on January 1, 2002.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

292H0658

HOUSE ENGROSSED NO. **HB 1281** - 02/05/2002

Introduced by: Representative Derby

1 FOR AN ACT ENTITLED, An Act to lengthen the period required for notice of nonrenewal of
2 certain insurance policies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-1-14 be amended to read as follows:

5 58-1-14. Notice of refusal to renew an insurance policy as defined in §§ 58-9-5 to 58-9-33,
6 inclusive, ~~except a policy of homeowner's insurance,~~ is not effective unless mailed or delivered
7 by the insurer to the named insured at least ~~thirty~~ sixty days before the effective renewal date.
8 The policy provisions control if the policy provides for a notice of refusal to renew that exceeds
9 ~~thirty~~ sixty days. This section does not apply to the cancellation and nonrenewal of automobile
10 policies or coverages as defined in § 58-11-45 or to a policy of homeowner's insurance. This
11 section also does not apply to any other personal lines policy. A notice of refusal to renew any
12 other personal lines policy is not effective unless mailed or delivered by the insurer to the named
13 insured at least thirty days before the effective renewal date. A notice of nonrenewal is not
14 required if the policyholder is transferred to an insurer that is a member of the same insurance
15 group as the previous insurer and notice of such transfer is given in the form adopted by rule by



1 the Division of Insurance pursuant to chapter 1-26.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

656H0700

HOUSE ENGROSSED NO. **HB 1291** - 02/07/2002

Introduced by: Representatives Brown (Richard), Bradford, Elliott, and Hennies (Don) and
Senators Diedtrich (Elmer) and Brown (Arnold)

1 FOR AN ACT ENTITLED, An Act to revise the requirements for obtaining a specialty license
2 plate organizational decal.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5-137 be amended to read as follows:

5 32-5-137. To qualify for an organizational decal, an organization shall be a nonprofit
6 corporation, or a group of nonprofit corporations with a common purpose, on file with the
7 secretary of state's office and shall have a minimum of two hundred members and shall meet the
8 following requirements:

- 9 (1) The primary activity or interest of the organization or group of organizations serves
10 the community, contributes to the welfare of others, and is not offensive or
11 discriminatory in its purpose, nature, activity, or name;
- 12 (2) The name and purpose of the organization or group of organizations does not
13 promote any specific product or brand name that is provided for sale; and
- 14 (3) The ~~purpose~~ decal of the organization or group of organizations does not promote a
15 specific religion, faith, or anti-religious belief.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0724

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1302** - 02/13/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of standard guidelines to
2 be used regarding child custody and visitation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For the purposes of this Act, the term, standard guidelines, means the child
5 visitation guidelines established by court rules promulgated by the South Dakota Supreme Court
6 pursuant to section 2 of this Act.

7 Section 2. The South Dakota Supreme Court shall promulgate court rules establishing
8 standard guidelines to be used statewide for child visitation in divorce or separate maintenance
9 actions or any other custody action or proceeding. The standard guidelines shall provide a
10 framework for child visitation including frequency and time for child visitation; hours or days of
11 visitation; definitions for weekends, holidays, birthdays, and other special occasions; and time
12 periods for summer visitations. In establishing the standard guidelines, the court may consider
13 varying ages and circumstances of children and treat varying ages and circumstances differently.

14 Section 3. Upon the filing of a summons and complaint for divorce or separate maintenance



1 or any other custody action or proceeding, the plaintiff shall also file and serve upon the
2 defendant a copy of the standard guidelines. The standard guidelines attached to the summons
3 shall become an order of the court upon fulfillment of the requirements of service. Any minor
4 child of the marriage shall remain in the custody of the parent who has been the primary
5 caregiver for the minor child for the majority of time in the thirty days preceding the filing of the
6 summons and complaint, unless the parties agree otherwise. The standard guidelines shall apply
7 and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the
8 standard guidelines creates no presumption as to who shall be awarded custody at any hearing.

9 Section 4. Any agreement by the parties for visitation other than the standard guidelines shall
10 be in writing, signed by both parties and filed with the court. The agreed plan shall be approved
11 by court order and replace the standard guidelines or any plan previously filed.

12 Section 5. If either party objects to the initial custody arrangement in section 3 of this Act
13 or the standard guidelines, the court shall order a hearing which shall be held not later than thirty
14 days after the date of the objection. The court shall issue its temporary custody and visitation
15 order after considering the best interests of the child consistent with the provisions of § 25-4-45.

16 Section 6. The standard guidelines are subject to any provision established by a South Dakota
17 state court in the following: a temporary or permanent domestic protection order, an order
18 arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and
19 an order in any other proceeding affecting child custody or support.

20 Section 7. The court may order either party to pay attorney fees and costs in an action filed
21 under this Act in accordance with § 15-17-38 or any other applicable statute.

22 Section 8. The parents are responsible for payment of child support in accordance with § 25-
23 7-6.1.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0727

HOUSE ENGROSSED NO. **HB 1303** - 02/07/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the Governor's emergency powers in the event of
2 a terrorist or bioterrorist attack.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 33-15-8 be amended to read as follows:

5 33-15-8. In the event of disaster, war, act of terrorism as defined in state law, or emergency
6 that is beyond local government capability, the Governor:

- 7 (1) May assume direct operational control over all or any part of the emergency
8 management functions within the state which may affect all or any portion of the state;
- 9 (2) May declare an emergency or disaster to exist in the stricken area and employ
10 emergency management to assist local authorities to affect relief and restoration;
- 11 (3) May call upon and use any facilities ~~and~~ equipment, other nonmedical supplies, and
12 resources available from any source, other than personal or private funds, in order to
13 carry out the purposes of this chapter by contributing to the expense incurred in
14 providing relief in such amounts as he shall determine;
- 15 (4) May suspend the provisions of any rules of any state agency, if strict compliance with



1 the provisions of ~~such~~ the rule would in any way prevent, hinder, or delay necessary
2 action in managing a disaster, war, act of terrorism, or emergency, including fire,
3 flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil
4 spill, or other water or air contamination, epidemic, blight, drought, infestation,
5 explosion, riot, or hostile military or paramilitary action, which is determined by the
6 Governor to require state or state and federal assistance or actions to supplement the
7 recovery efforts of local governments in alleviating the damage, loss, hardship, or
8 suffering caused thereby; ~~and~~

9 (5) May control the ingress and egress in a designated disaster or emergency area, the
10 movement of vehicles upon highways within the area, the movement of persons within
11 the area, and the occupancy of premises within the area;

12 (6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or
13 medical supplies located within the state as may be reasonable and necessary to
14 respond to the disaster, emergency, or act of terrorism;

15 (7) May appoint and prescribe the duties of such out-of-state health care providers as may
16 be reasonable and necessary to respond to the disaster, emergency, or act of
17 terrorism;

18 (8) May provide for the examination and safe disposal of any dead body as may be
19 reasonable and necessary to respond to the disaster, emergency, or act of terrorism;
20 and

21 (9) May provide for the protection, construction or reconstruction, repair, and
22 maintenance of public or private transportation facilities.

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0728

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1304** - 02/05/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the emergency powers of the Department of
2 Health.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this Act, a public health emergency is an occurrence or imminent threat
7 of an illness, health condition, or widespread exposure to an infectious or toxic agent that poses
8 a significant risk of substantial harm to the affected population.

9 Section 2. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The secretary of health, with the consent of the Governor, may declare a public health
12 emergency as defined by section 1 of this Act. In declaring a public health emergency, the
13 secretary shall issue an order that specifies:

- 14 (1) The nature of the public health emergency;
15 (2) The geographic area subject to the declaration;



(3) The conditions that have brought about the public health emergency; and

(4) The expected duration of the state of public health emergency, if less than thirty days.

Section 3. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as follows:

The department shall have primary jurisdiction, responsibility, and authority for responding to a public health emergency declared pursuant to section 2 of this Act including:

(1) Planning and executing public health emergency assessment, mitigation, preparedness, and response;

(2) Coordinating public health emergency response between state and local authorities;

(3) Collaborating with relevant federal, state, tribal, and local authorities; and

(4) Organizing public information activities regarding public health emergency response operations.

The Department of Health may promulgate rules, pursuant to chapter 1-26, to implement the provisions of this section.

Section 4. That chapter 34-22 be amended by adding thereto a NEW SECTION to read as follows:

Any public health emergency declared pursuant to section 2 of this Act shall be terminated automatically after thirty days unless renewed by the secretary under the same standards and procedures set forth in section 2 of this Act.

Section 5. That § 34-3-26 be amended to read as follows:

34-3-26. The powers and duties of the board of health in a full-time county or district health department shall be the same as those specified for county boards of health and the superintendents thereof as provided for by §§ ~~34-2-4 to 34-2-10, inclusive~~ chapter 34-16 and sections 8 and 9 of this Act.

1 Section 6. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Each county may establish a county board of health which shall be composed of the state's
4 attorney of the county, who shall be president of the board; a physician, a physician assistant, or
5 nurse practitioner who practices in the county, appointed by the Department of Health, who shall
6 serve as superintendent of the board of health; and one other resident of the county.

7 Section 7. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The county board of health shall meet at the county seat at such times as the superintendent
10 may designate. The president of the county board of health shall preside at the meetings.

11 Section 8. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The superintendent of the county board of health shall have charge of and superintend,
14 subject to the approval of the board, all the matters and things specified in this chapter. In case
15 of immediate danger to the health of persons, the superintendent may act without consultation
16 with the county board, for the prevention of such danger, and shall immediately report the action
17 to the president of the county board and to the secretary of health.

18 Section 9. That chapter 34-16 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The county board of health, within the territorial limits of its county not included in any first
21 or second class municipality having its own board of health, may remove or cause to be removed
22 any dead, decaying, or putrid body, or any decayed, putrid, or other substance that may endanger
23 the health of persons or domestic animals.

24 Section 10. That § 34-2-1 be repealed.

1 ~~34-2-1. There shall be a county board of health which shall be composed of the state's~~
2 ~~attorney of the county, who shall be president thereof, and two licensed physicians, residents of~~
3 ~~the county, appointed by the Department of Health, one of whom shall be named superintendent~~
4 ~~and the other vice-president of such county board, and whose term of office shall be for two~~
5 ~~years. In counties where there are no resident physicians, the Department of Health may provide~~
6 ~~for such county boards under such rules and regulations as it may deem proper.~~

7 Section 11. That § 34-2-2 be repealed.

8 ~~34-2-2. Should a vacancy occur in any county board of health from any cause other than the~~
9 ~~expiration of the time for which a member had been appointed, the secretary of health shall, upon~~
10 ~~proper notification of such vacancy, proceed to appoint a proper person to fill the vacancy.~~

11 Section 12. That § 34-2-3 be repealed.

12 ~~34-2-3. The county board of health shall meet at the county seat at such times as the~~
13 ~~superintendent may designate, notice of the time and place of meeting to be given by him to the~~
14 ~~other members of the board at least five days prior to the meeting. The president of the county~~
15 ~~board of health shall preside at the meetings thereof.~~

16 Section 13. That § 34-2-4 be repealed.

17 ~~34-2-4. The superintendent of the county board of health shall be ex officio secretary of the~~
18 ~~board of health of his county and shall keep a record of all the proceedings of the board and of~~
19 ~~his official acts and shall at the end of every month make a full report in writing to the secretary~~
20 ~~of health of the proceedings of the county board and of his official acts, and of the condition of~~
21 ~~the public health, and whenever any contagious or infectious disease occurs in his county shall~~
22 ~~immediately report the same to the secretary of health.~~

23 Section 14. That § 34-2-5 be repealed.

24 ~~34-2-5. The superintendent of the county board of health shall have charge of and~~

1 ~~superintend, subject to the approval of the board of which he is a member and the supervisory~~
2 ~~control of the Department of Health, all the matters and things specified in this chapter and, in~~
3 ~~case of immediate danger to the health of persons, he may act as in his judgment he may deem~~
4 ~~proper without consultation with the county board, for the prevention of such danger, and shall~~
5 ~~immediately report such action to the president of the county board and to the secretary of~~
6 ~~health.~~

7 Section 15. That § 34-2-6 be repealed.

8 ~~— 34-2-6. Subject to the supervising control of the Department of Health, the county board of~~
9 ~~health, within the territorial limits of its county not included in any first or second class~~
10 ~~municipality having its own board of health, shall have power to enforce any and all needful rules~~
11 ~~and regulations made by the Department of Health for the prevention and cure, and to prevent~~
12 ~~the spread of contagious diseases.~~

13 Section 16. That § 34-2-7 be repealed.

14 ~~— 34-2-7. Subject to the supervising control of the Department of Health, the county board of~~
15 ~~health, within the territorial limits of its county not included in any first or second class~~
16 ~~municipality having its own board of health, shall have power to establish quarantine and isolate~~
17 ~~any person afflicted with a contagious or infectious disease.~~

18 Section 17. That § 34-2-8 be repealed.

19 ~~— 34-2-8. Subject to the supervising control of the Department of Health, the county board of~~
20 ~~health, within the territorial limits of its county not included in any first or second class~~
21 ~~municipality having its own board of health, shall have power to appoint all duly licensed~~
22 ~~physicians within the county deputies with power to quarantine any and all cases of infectious,~~
23 ~~contagious, or communicable diseases, subject to quarantine pursuant to the rules and~~
24 ~~regulations of the Department of Health. For all services rendered in quarantining, such deputies~~

1 ~~shall be entitled to the sum of one dollar for each premise so quarantined. The county board shall~~
2 ~~also have power to delegate to any person or physician within the county authority to release any~~
3 ~~quarantine, under the supervision of such county board, to fumigate premises, and to do any and~~
4 ~~all other things that may be necessary to protect the health of the public.~~

5 Section 18. That § 34-2-9 be repealed.

6 ~~—34-2-9. Subject to the supervising control of the Department of Health, the county board of~~
7 ~~health, within the territorial limits of its county not included in any first or second class~~
8 ~~municipality having its own board of health, shall have power to remove or cause to be removed~~
9 ~~any dead, decaying, or putrid body, or any decayed, putrid, or other substance that may endanger~~
10 ~~the health of persons or domestic animals.~~

11 Section 19. That § 34-2-10 be repealed.

12 ~~—34-2-10. Subject to the supervising control of the Department of Health, the county board~~
13 ~~of health, within the territorial limits of its county not included in any first or second class~~
14 ~~municipality having its own board of health, in addition to the powers granted by §§ 34-2-6 to~~
15 ~~34-2-9, inclusive, shall have original power to inquire into sanitary conditions of schoolhouses~~
16 ~~within the county, and upon complaint and investigation shall have power to abate any unsanitary~~
17 ~~conditions that may be found to exist. When upon investigation such county board of health shall~~
18 ~~find any schoolhouse in such an unsanitary condition that it is detrimental to the health of the~~
19 ~~children attending school therein, it shall immediately summon the school board of any such~~
20 ~~district to a hearing thereon and require the school board to abate the condition complained of.~~
21 ~~The order so made shall be in writing and a copy of such order placed on file in the office of the~~
22 ~~business manager of such board. Any order so made shall be enforceable in the same manner as~~
23 ~~are other orders made by such board with the same rights of appeal to the circuit court.~~

24 Section 20. That § 34-2-11 be repealed.

1 ~~34-2-11. Any person who shall violate any of the provisions of this chapter, or any of the~~
2 ~~rules and regulations made by the Department of Health to carry out the provisions thereof, or~~
3 ~~who shall willfully oppose or obstruct any health officer in performing his duty is guilty of a Class~~
4 ~~1 misdemeanor.~~

5 Section 21. That § 34-2-12 be repealed.

6 ~~34-2-12. The president of the county board of health shall receive no compensation except~~
7 ~~ten cents for every mile actually and necessarily traveled in the performance of his duties as a~~
8 ~~member of such board.~~

9 Section 22. That § 34-2-13 be repealed.

10 ~~34-2-13. The superintendent of the county board of health shall receive ten cents for every~~
11 ~~mile actually and necessarily traveled by the nearest route in the performance of his duties when~~
12 ~~not the attending physician, which mileage shall be in lieu of all compensation for traveling~~
13 ~~expenses; the superintendent or the vice-president, if he performs the duties of the~~
14 ~~superintendent, shall receive such other sums as the board of county commissioners may allow.~~

15 Section 23. That § 34-2-14 be repealed.

16 ~~34-2-14. For each investigation, visit, or examination necessarily made under the rules of the~~
17 ~~Department of Health, when no investigation, visit, or examination has been made by any other~~
18 ~~member of the county board of health or any deputy appointed under this chapter, the~~
19 ~~superintendent of the county board of health or the vice-president, if he performs the duties of~~
20 ~~the superintendent, shall receive five dollars.~~

21 Section 24. That § 34-2-15 be repealed.

22 ~~34-2-15. The superintendent of the county board of health shall also receive the sum of five~~
23 ~~dollars per month for making the daily reports and keeping the records of his office as required~~
24 ~~by the rules and regulations of the Department of Health, and he or the vice-president, if he~~

1 ~~performs the duties of the superintendent, shall further receive such other sum or sums as he may~~
2 ~~pay or become liable to pay for medicine, chemicals, drugs, or appliances in carrying out and~~
3 ~~performing the various duties imposed upon him by law which, together with other expenses,~~
4 ~~shall be audited by the board of county commissioners and paid as other county expenses.~~

5 Section 25. That § 34-2-16 be repealed.

6 ~~—34-2-16. In counties where the total annual fees and mileage drawn by the superintendent of~~
7 ~~the county board of health exceeds the sum of two thousand dollars, the board of county~~
8 ~~commissioners of such counties may in their discretion pay such superintendent a monthly wage~~
9 ~~or salary, in amount to be fixed and determined by said board of commissioners and in such case~~
10 ~~such wage or salary shall be paid to and received by said superintendent in lieu of all mileage and~~
11 ~~fees as provided in this chapter.~~

12 Section 26. That § 34-16-3 be repealed.

13 ~~—34-16-3. All county boards of health and health officers shall make such investigations and~~
14 ~~reports and obey such directions concerning communicable diseases as the Department of Health~~
15 ~~may require or give, and under the general supervision of the department they shall cause all laws~~
16 ~~and regulations relating to public health and sanitary matters to be obeyed and enforced.~~

17 Section 27. That § 34-16-4 be repealed.

18 ~~—34-16-4. Every county board of health member or officer refusing or neglecting to perform~~
19 ~~any duty imposed upon him by or pursuant to this chapter or by any statute, ordinance, bylaw,~~
20 ~~or rule or regulation relating to public health and sanitary measures shall be punished according~~
21 ~~to the provisions of § 34-2-11.~~

22 Section 28. That § 34-16-6 be repealed.

23 ~~—34-16-6. Whenever the township board of health thinks it necessary for the preservation of~~
24 ~~the health of its inhabitants to enter any building, car, truck, automobile, or vessel in the~~

1 ~~township for the purpose of examining into and destroying, removing, or preventing any~~
2 ~~nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the~~
3 ~~board may make complaint under oath to a judge of the circuit court for the county, stating the~~
4 ~~facts in the case so far as he has knowledge thereof.~~

5 Section 29. That § 34-16-7 be repealed.

6 ~~—34-16-7. The circuit court judge to whom complaint is made pursuant to § 34-16-6 shall~~
7 ~~thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him~~
8 ~~to take sufficient aid and, accompanied by two or more of the board of health, between the hours~~
9 ~~of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of~~
10 ~~sickness complained of may be and to destroy, remove, or prevent the same under the direction~~
11 ~~of the members of such board of health.~~

12 Section 30. That § 34-16-8 be repealed.

13 ~~—34-16-8. Whenever any nuisance, source of filth, or cause of sickness is found on private~~
14 ~~property, the township board of health shall order the owner or occupant thereof at his own~~
15 ~~expense to remove the same within twenty-four hours; and if the owner or occupant thereof~~
16 ~~neglects so to do he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name~~
17 ~~of and for the use of the township.~~

18 Section 31. That § 34-16-9 be repealed.

19 ~~—34-16-9. Whenever an owner or occupant of private property shall not comply with an order~~
20 ~~of the board of health under § 34-16-8, the board may cause the nuisance, source of filth, or~~
21 ~~cause of sickness to be removed, and all expenses incurred thereby shall be paid by the owner~~
22 ~~or occupant or by such other person as has caused or permitted the same.~~

23 Section 32. That § 34-16-10 be repealed.

24 ~~—34-16-10. Whenever it shall be brought to the knowledge of any member of the board of~~

1 ~~township supervisors that the dead, putrid, or decaying body of any animal is unburied in his~~
2 ~~township and is or may become offensive or endangers or may endanger the health of persons~~
3 ~~or domestic animals, such supervisor shall forthwith notify the person who was at the time of its~~
4 ~~death the owner of such animal and also the person who was at such time in charge thereof, if~~
5 ~~known to him and residing in the township, to burn or bury such body or otherwise dispose of~~
6 ~~such body in the manner provided by law within a reasonable time to be fixed by the said~~
7 ~~supervisor.~~

8 Section 33. That § 34-16-11 be repealed.

9 ~~— 34-16-11. If the owner or person in charge shall fail, neglect, or refuse to burn or bury or~~
10 ~~otherwise dispose of such body in accordance with the laws, rules, and regulations provided by~~
11 ~~§§ 34-16-10 to 34-16-13, inclusive, within the time required by such supervisor, or if such~~
12 ~~persons are unknown to the said supervisor or do not reside in the township, the said supervisor~~
13 ~~shall at once cause the same to be buried or burned and the expense of the same shall be paid by~~
14 ~~the township where such animal is found dead.~~

15 Section 34. That § 34-16-12 be repealed.

16 ~~— 34-16-12. The burning or burial provided for in §§ 34-16-10 and 34-16-11 shall be done~~
17 ~~effectively and thoroughly so that the body shall not emit any stench or be offensive or in any~~
18 ~~manner endanger the health of persons or domestic animals.~~

19 Section 35. That § 34-16-13 be repealed.

20 ~~— 34-16-13. The owner of such animal and the person in charge thereof shall at once become~~
21 ~~liable to the township for the costs and expenses of burning or burial and notice pursuant to~~
22 ~~§ 34-16-11, and the same may be recovered in an action to be instituted against both or either~~
23 ~~of such persons.~~

24 Section 36. That § 34-22-3 be repealed.

1 ~~— 34-22-3. When a disease dangerous to the public health breaks out in any township the~~
2 ~~township board of health shall immediately provide such hospital or place of reception for the~~
3 ~~sick and infected as is judged best for their accommodation and the safety of the inhabitants;~~
4 ~~which shall be subject to the regulations of the board; and the board may cause any sick or~~
5 ~~infected person to be removed thereto, unless his condition will not admit of such removal~~
6 ~~without danger to his health, in which case the house or place where he remains shall be~~
7 ~~considered as a hospital and with all its inmates subject to the regulations of the board.~~

8 Section 37. That § 34-22-4 be repealed.

9 ~~— 34-22-4. When any person coming from abroad, or residing in any civil township in this state,~~
10 ~~is infected or has lately been infected with smallpox or other contagious or infectious disease~~
11 ~~dangerous to the public health, the board of health of the township where such sick or infected~~
12 ~~person is may immediately cause such person to be removed to a separate house, if it can be~~
13 ~~done without danger to his health, and shall provide for such person, nurses, medical attendance,~~
14 ~~and other necessities which shall be a charge in favor of such township against the person so~~
15 ~~provided for, his parents or guardian, if able to pay the same, otherwise against the county to~~
16 ~~which he belongs, or the state, if such person be a nonresident of the state.~~

17 ~~— If such infected person cannot be removed without danger to his health, the board shall make~~
18 ~~provision as directed in the preceding paragraph for such person in the house where he may be,~~
19 ~~and in such case it may cause the persons in the neighborhood to be removed, and may take such~~
20 ~~other measures as it may deem necessary for the safety of the inhabitants.~~

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0730

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1305** - 02/05/2002

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to define terrorism, to create the crime of terrorism, and to
2 provide a penalty therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 22-8 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person who commits a crime of violence as defined by subdivision 22-1-2(9) or an act
7 dangerous to human life including any use of chemical, biological, or radioactive material, or any
8 explosive or destructive device with the intent to do any of the following:

- 9 (1) Intimidate or coerce a civilian population;
- 10 (2) Influence the policy or conduct of any government or nation;
- 11 (3) Affect the conduct of any government or nation by assassination or kidnapping; or
- 12 (4) Substantially impair or interrupt public communications, public transportation,
13 common carriers, public utilities, or other public services;

14 is guilty of an act of terrorism. A violation of this section is a Class A felony.



State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

664H0691

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 177** - 02/08/2002

Introduced by: Senators Hutmacher and Koskan and Representatives Juhnke and Jensen

1 FOR AN ACT ENTITLED, An Act to revise and modify certain provisions relating to the award
2 of child custody and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-5-7 be amended to read as follows:

5 25-5-7. The father and mother of an unmarried minor child are equally entitled to the child's
6 custody, service, and earnings. If either the father or mother is dead, or refuses to ~~take the~~
7 assume custody, or ~~has abandoned~~ abandons the family, the other is entitled to the child's
8 custody, service, and earnings. If a sole surviving parent or both parents abandons the child, the
9 court may award custody of the child to a third person pursuant to section 4 of this Act.

10 Section 2. A parent's presumptive right to custody of his or her child may be rebutted by
11 clear and convincing proof that the parent is unfit, has abandoned the child, or has forfeited or
12 otherwise surrendered his or her custodial rights over the child to a third person who stands,
13 constructively or legally, in loco parentis.

14 Section 3. Nothing in section 2 of this Act creates any right on behalf of a stepparent to seek
15 custody or visitation with a stepchild who has lived with that stepparent merely because the



stepparent was married to or living with the child's biological parent.

Section 4. Any person other than the parent of the child may intervene or petition a court of competent jurisdiction for custody or visitation of any child in his or her immediate care if the petitioner has had the child in his or her care and control for a year or more. To prevail, the petitioner must establish that the sole surviving parent or both parents:

- (1) Abandoned his or her parental rights over the child during the time the child was in the care and control of the petitioner; or
- (2) Forfeited or surrendered his or her parental rights over the child to any third party during the time the child was in the care and control of the petitioner; or
- (3) Failed to persistently assert and exercise his or her parental rights over the child and made good faith efforts to fulfill his or her parental duties and obligations to the child during the time the child was in the care and control of the petitioner; or
- (4) That awarding custody to the biological parent would cause serious detriment to the child.

Section 5. Serious detriment to a child exists whenever there is proof of one or more of the following extraordinary circumstances:

- (1) The abandonment or persistent neglect of the child by the parent;
- (2) The likelihood of serious physical or emotional harm to the child if placed in the parent's custody;
- (3) The extended, unjustifiable absence of parental custody;
- (4) The abdication of parental responsibilities;
- (5) The provision of the child's physical, emotional, and other needs by persons other than the parent over a significant period of time;
- (6) The existence of a bonded relationship between the child and the person other than

1 the parent sufficient to cause significant emotional harm to the child in the event of
2 a change in custody;

3 (7) The substantial enhancement of the child's well-being while under the care of the
4 person other than the parent;

5 (8) The extent of the parent's delay in seeking to reacquire custody of the child;

6 (9) The demonstrated quality of the parent's commitment to raising the child;

7 (10) The likely degree of stability and security in the child's future with the parent;

8 (11) The extent to which the child's right to an education would be impaired while in the
9 custody of the parent; or

10 (12) Any other circumstances that would substantially and adversely impact the welfare of
11 the child.

12 Section 6. If a court determines that a petitioner pursuant to section 4 of this Act should be
13 awarded custody or visitation, the court need not terminate either biological parent's parental
14 rights over the child. A judgment awarding the petitioner custodial rights may award the
15 biological parent with visitation rights with the child.

16 Section 7. If a court awards a third party custodial rights to a child, the court may set child
17 support in whatever amount it deems appropriate, and notwithstanding the provisions of any
18 other statute to the contrary, may waive the biological parent's duty to provide monetary or other
19 support for their child.

20 Section 8. Whereas, this Act is necessary for the immediate preservation of the public peace,
21 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
22 effect from and after its passage and approval.